

## **January 24, 2019 Planning Board/Board of Adjustment Minutes**

Mr. Ford called the Meeting of the Union Township Planning Board/Board of Adjustment to order at 7:00 p.m.

**Members Present:** Mr. Mazza, Mr. Nace, Mr. Eschbach, Mr. Kastrud, Mr. Dix, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford

**Board Professionals Present:** Atty. Mark Anderson, Robert Clerico, Andrea Malcolm

**Members Absent:** Mr. Stothoff

**Others Present:**

**Spatz:** Atty. Joseph Novak

**Fallone:** Atty. Jolanta Maziarz, Principal Owner Robert Fallone, Engineer James Mantz

Atty. Anderson said the Union Township Board of Education Resolution would not be memorialized tonight.

**Approval of Minutes:** Mr. Kastrud made a motion to approve the minutes of the January 10, 2019 Reorganization Meeting. Mr. Eschbach seconded the motion.

Vote: Ayes: Mr. Kastrud, Mr. Eschbach, Mr. Mazza, Mr. Nace, Mr. Dix, Mr. Petitt, Mr. Kirkpatrick Mr. Ford

Mr. Eschbach made a motion to approve the minutes of the December 20, 2019 Meeting. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Eschbach, Mr. Nace, Mr. Mazza, Mr. Petitt, Mr. Kirkpatrick, Mr. Ford

Abstain: Mr. Kastrud, Mr. Dix

### **Memorialization of Resolutions:**

- 1. V.A. Spatz and Sons Construction INC: Block 22, Lot 5, 35 Frontage Road: Interpretation of Land Use Code:** Mr. Kirkpatrick made a motion to memorialize the Resolution. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Nace, Mr. Eschbach, Mr. Ford

Abstain: Mr. Kastrud, Mr. Dix, Mr. Petitt

- 2. KDAC, LLC and Craneworks, Inc. Block 12, Lot 1.04, 96 Route 173 West: Appeal from Decision of Zoning Officer:** Mr. Kirkpatrick made a motion to memorialize the Resolution. Mr. Nace seconded the motion.

Vote: Ayes: Mr. Kirkpatrick, Mr. Nace, Mr. Eschbach, Mr. Ford

Abstain: Mr. Kastrud, Mr. Dix, Mr. Petitt

**Public Hearing, cont'd: Fallone Group LLC: Block 22, Lot 34, Perryville Road: Preliminary & Final Major Subdivision:** Mr. Ford mentioned that since the last Hearing an issue had materialized regarding the definition and requirements for side yard setbacks in the Village Residential (VR) District. Atty. Maziarz said applicant's Professionals have met with Board Professionals since the last Meeting. She said the application conforms to the Ordinance and complies with all setbacks and bulk standards. Atty. Anderson said there is a question if the application is in conformance with Ordinance Standards. Ms. Malcolm said the question pertains to whether one or two side yard setbacks are required. Mr. Kirkpatrick said he understands the Ordinance requires a ten-foot side yard setback on either side of the building in the VR District. He said the Multi-Residential District (MR) explicitly states that only one ten-foot setback is required. Twin homes are permitted in both the VR and MR Districts. Ms. Maziarz said twin is defined as having a common wall.

Mr. Ford announced that the Board would take a five-minute recess to allow the applicant and attorney to confer.

The Hearing reconvened. Atty. Maziarz said applicant is allowed to have double the number of units. She said there would be one twin on each of the proposed lots. Mr. Kirkpatrick said it could be addressed by eliminating the lot line between the two twin units. Ms. Maziarz said applicant would prefer not to do that. She said applicant could request a bulk variance for that lot line. Ms. Maziarz said an exhibit showing an alternate layout that brings the driveways closer together will be provided.

Atty. Maziarz said applicant will address the Environmental Commission report. She introduced the following witnesses: Engineer James Mantz, Fallone Group Principal Owner Robert Fallone, Traffic Engineer Douglass Polyniak and Sewer Engineer Adam Stern.

Atty. Anderson addressed the meeting held by applicants Professionals and Board Professionals that occurred after the January 10, 2019 meeting. The issue of an Interpretation of the Ordinance and if the application could become a Board of Adjustment matter was discussed. Mr. Kirkpatrick understood that the conceptual building plans would change substantially. He said each lot is shown with only one ten-foot side yard and the subdivision Plan would be changed to show two side yards. Atty. Maziarz said applicant would need to amend the Plan to seek a bulk variance. Ms. Maziarz asked to proceed with Professionals present tonight providing testimony so they might not have to return to a future Hearing. Atty. Anderson indicated that if it is determined this application is a Board of Adjustment matter, that testimony would not be relevant.

Mr. Ford announced a time limit until 9:30 p.m. Atty. Maziarz asked that Traffic Engineer Douglass Polyniak be sworn. After being sworn by Atty. Anderson, Mr. Polyniak provided his credentials. The Board accepted his credentials. Mr. Polyniak addressed the Environmental Commission's

concerns. He said the traffic Impact would not be substantial. The intersection will be designed to align appropriately with the existing Elementary School Driveway. The traffic flow to and from the proposed development would be at different times than the traffic to and from the School. Mr. Ford asked Mr. Polyniak if the information was based on observation of the traffic flow. Mr. Polyniak replied "Yes". Mr. Ford asked if there had been a study of traffic conditions at nearby intersections. Mr. Polyniak said that had not been done. Mr. Kirkpatrick recollected that St. Catherine of Sienna had looked at traffic conditions at Race Street, Perryville Road and Mechlin's Corner Road when they appeared before the Board and thought there would be more traffic than that stated by Mr. Polyniak.

Atty. Maziarz noted the Environmental Commission was concerned about idling. Mr. Polyniak said there would be very little delay of movement at the intersection. Ms. Maziarz mentioned the designated left turn at the intersection. Mr. Polyniak did not think there was a need for that designation. Mr. Kastrud asked the necessity of a boulevard style entrance, as well as the left-hand turn in the Subdivision. Mr. Polyniak said from a traffic impact perspective, he did not think that would be required. Mr. Kastrud asked if consideration had been given to sidewalks and children crossing Perryville Road. Mr. Polyniak said "Yes, Definitely". Mr. Kastrud referenced doubling the number of units. Atty. Maziarz indicated the application is for seventy-four units.

Mr. Ford invited members of the Public to ask questions of Mr. Polyniak about his testimony. Tracy Horvath, Perryville Road, mentioned a traffic accident on Interstate 78 that resulted in increased traffic by her house. Mr. Polyniak did not think the traffic from the proposed development would be significant.

Atty. Maziarz asked that Sewer Engineer Adam Stern be sworn. After being sworn by Atty. Anderson, Mr. Stern stated his qualifications. They were acceptable to the Board. Mr. Stern gave an overview of the previously approved sewage treatment plant and the changes proposed for this development. Mr. Stern said the proposed volume of wastewater is 22,100 gallons per day (gpd). Mr. Ford asked Mr. Stern how much effluent would be produced by the seventy-four proposed units. Mr. Stern estimated the flow would be 15,000 gallons per day (gpd) when the project was completed. He said the Discharge Permit and the Treatment Works Approval (TWA) from the previous approval are in effect. The area for the disposal beds was discussed. There is approximately 30,000 sf available for discharge. Mr. Stern said that disturbance of steep slopes would be minimized.

Mr. Kirkpatrick asked Mr. Stern who would own and operate the Sewage Treatment System. Mr. Stern said it would be the HOA. Mr. Kirkpatrick asked if the System Facility would be similar to that at Lookout Pointe and would the Facility require lighting and could there be a problem with odor or noise? Mr. Stern said there would be flexibility with the Facility and any odor should be negligible. Mr. Kirkpatrick asked about the flow of groundwater. Mr. Stern said it would follow the topography of the site. Mr. Kirkpatrick asked the proximity of existing wells. Mr. Stern said he did not know; however, consideration

had been given to that issue with the previous application. He did not believe the water quality would be degraded. Mr. Stern confirmed this site is located in a Category 1 Watershed. Mr. Kirkpatrick asked if applicant was required to meet current anti-degradation Standards at the time of their previous approval? Mr. Stern said that was not applicable to groundwater discharge. Mr. Kirkpatrick asked if nitrate levels and water quality would be degraded or cause a violation of the Standards to the surface water or adjacent wells. Mr. Stern said, as designed and properly operated, it would not. Mr. Clerico mentioned the previous approval and Mr. Stern's reference to the storm water recharge occurring up-gradient from the disposal beds. Would any groundwater would discharge from those beds? Mr. Stern said "No, that is not a concern". Mr. Kastrud asked the impact of a power failure on the System. Mr. Stern said the generator would be effective for approximately twenty-four hours, after which time a network of operators would assume responsibility. Mr. Kirkpatrick asked about any changes in ground water flow patterns or quality as a result of construction of the infiltration basin on the left side of the site. Mr. Stern said that would be considered as part of the modification of the discharge Permit. Mr. Kirkpatrick asked if pesticides, fertilizers and herbicides would be limited in the lawn area. Mr. Stern said the HOA would control those applications. Mr. Stern referenced the ten-thousand gallon equalization tank.

Mr. Kastrud had questions about the HOA. Would the HOA own the sewer pipes and everything within the cul-de-sac? Mr. Kirkpatrick understood the collection system would be owned by the HOA. Atty. Maziarz said the developer would comply with the Ordinance. She said it would probably be either the HOA or a private entity. Mr. Kastrud understood the treatment facility design had not been finalized. He thought the Board would want to see that final design. Mr. Stern said it could be consistent with the Lookout Pointe Facility. Mr. Stern said State-Licensed Operators would be at the site five-days a week and would utilize a small pickup truck. Mr. Kastrud said applicant had reduced the number of disposal beds from six to four, did applicant anticipate better permeability? Mr. Stern said the plan was to minimize encroachment into the steep slopes and lengthen and widen the four beds. Mr. Kastrud asked the timing of construction and when the Facility would be implemented? Mr. Stern said the Facility would be implemented when the flow reached the five-to-eight-thousand (gpd) range. Prior to that, the equalization tank would be utilized. Mr. Stern described access to the Facility. Mr. Clerico asked the potential lifespan of the Facility. Mr. Stern estimated a span of more than fifty years. Mr. Kirkpatrick asked if applicant would have to notify property owners within two-hundred feet of the site since the discharge Permit would be modified. Mr. Stern said notification would not be required for the TWA Permit; however, it would be for the NJPDES Permit.

Mr. Ford asked for questions from the Public for Mr. Stern. Steve Perdue, 6 Deer Run, Pittstown, asked if any of the Permits might require a Water Quality Management Plan Amendment. Mr. Stern said "Yes". Mr. Perdue asked if a Highlands' Review would be triggered. Mr. Stern said it would not because the volume of flow has not been increased. Mr. Perdue asked if the original Permits had been reviewed by

the Highlands. Mr. Stern said there had been no review. Mr. Perdue asked if there had been a full Highlands' Review. Mr. Stern did not know.

Kathy Corcoran, 17 Midvale Drive, Pittstown, asked about changes to the Plan. Mr. Stern said the changes were required because the septic fields are in an environmental buffer area. He also said the Treatment Plant Site changed. Mr. Stern told Ms. Corcoran that membrane treatment is proposed and an ultra-violet method will provide disinfection. He said monitoring wells are proposed and results will be shown on the Permits. Ms. Corcoran voiced a concern about seepage from the disposal beds into the storm basins. She asked about back up disposal beds. Mr. Stern indicated that was taken into account.

Messrs. Clerico, Kirkpatrick and Ms. Corcoran asked about the proposed flow from individual units and the possibility of illicit hookups. Ms. Corcoran voiced a concern about ground water levels below basement floor levels. Mr. Ford said Messrs. Fallone and Mantz would address the issue. Atty. Maziarz said Mr. Clerico had raised an issue about an increase in the number of units. What would be the impact of doubling the number of units and reducing the number of bedrooms to two per unit Mr. Stern said the design flow generation determines flow usage, not the number of units.

John Corcoran, 17 Midvale Drive, asked Mr. Stern to elaborate on monitoring well sampling; what type of tests, how often? Mr. Stern indicated that the Licensed Operator, who is hired by the owner of the System, would have to comply with DEP requirements.

John Nordstrom, 5 Carhart Court, had a question about cleaning of the Treatment Facility. Mr. Stern explained the mechanics would be similar to pumping an individual residential system. Mr. Nordstrom asked if rainwater would run off the disposal beds or leach into the beds. Mr. Stern said there would not be ponding and run off would be limited.

Mark Carlson, 5 Midvale Drive, asked about chemical waste etc. Mr. Stern said residents would be given information regarding items that should not be discarded into the system.

David Van't Slot, 12 Midvale Drive, asked if there was a second infiltration system to correct any catastrophic error and what would happen if something got in the beds? Mr. Stern indicated that there are provisions to address emergency issues.

Atty. Maziarz noted that Mr. Kastrud had a question for Mr. Mantz regarding the necessity of a dual access to the Subdivision. Mr. Mantz said that was a RSIS requirement. Mr. Kirkpatrick noted that the gravel access to the beds was not shown on the Plan.

Mr. Nace asked about data regarding family-size for four-bedroom townhouses. He said the July 2018 Environmental Impact Statement (EIS) stated there would be twenty-three children in the development. Mr. Kirkpatrick asked the source of that information; did it seem reasonable? Mr. Mantz said "No, it does not". Mr. Kirkpatrick said the EIS should be revisited. Mr. Mazza noted there were no recreational facilities proposed for residents of the development.

A question was asked about the size of the back yards. Mr. Mantz indicated the depth of the lot range was sixty to one-hundred and forty feet. Would there be space to install a pool or build a deck? Mr. Mantz said "Yes". Sheet 1 of the Plan will be modified to show restricted areas. Mr. Eschbach reiterated his concern about emergency vehicle access and circulation. Mr. Mantz emphasized the turning radius is RSIS compliant. Mr. Kirkpatrick asked Mr. Mantz if it was customary to meet with the Fire Company to review the proposed layout. Mr. Mantz said it was not. Mr. Ford said it is in Union Township. Mr. Eschbach asked "wouldn't you want that for your home in case you had a fire. Atty. Maziarz said "Of Course", she also said the applicant is complying with correct standards. Mr. Nace asked if parking were allowed on the corners of the streets would there be adequate clearance for a moving van. Mr. Mantz said he would revisit the issue and revise the Plan, eliminating parking in the tight areas on the street. Mr. Ford mentioned the retention basin on the west side of the site that ultimately drains onto Perryville Road. Mr. Mantz said it traverses to Mechlin's Corner Road and has the capacity to handle the flow.

Mr. Nace referenced the size of the water line from Midvale Drive. Mr. Mantz said the line is eight inches and includes the need for fire suppression. Mr. Kirkpatrick said the ownership of the land between Midvale and the subject property was still in question. Mr. Mantz said that land was dedicated to Union Township by virtue of the Subdivision. Mr. Kirkpatrick asked if applicant had secured Township approval to construct the water line. Mr. Mantz said, "No, not yet". He will obtain necessary permission.

Mr. Ford asked for additional questions from the Public. Kathleen Corcoran asked about drainage. Mr. Mantz said there is a gabion spreader that discharges the storm water into the conservation easement at the northeastern corner of the property and ultimately toward Block 22.02, Lot 26. That Lot is owned by the Highland Ridge HOA. Mr. Clerico thought the discharge issue should be discussed further. Mr. Mantz agreed. Mr. Clerico asked about discharge onto Perryville Road. A question was asked about a third basin. Mr. Mantz said that basin would be located behind Lot 34.46. He said the basin collects water from Lots 34.48-34.59 and 34.03-34.18. The water is discharged toward the Street and then piped down between Lots 34.12 and 34.13 to the detention basin. Mr. Mantz said Soil Conservation requires Standards be met to assure there is no soil erosion.

Mr. Mantz displayed Sheet 8 of 35 showing the easterly detention basin. It was marked Exhibit A-6. He explained how the water would dissipate through a level spreader across the ground. Mr. Mantz anticipated about fifteen to forty gallons of water per minute would traverse the ground. It is the HOA's responsibility to maintain the detention basins, outlet structures and to correct any discharge problems.

David Van't Slot, 12 Midvale Drive, said when the retention basin was filled there will be more water in a concentrated area than if the site was not developed. Mr. Mantz agreed. Atty. Maziarz mentioned that Mr. Mantz testified that water from the leaders on the homes would flow into the collection basins. Mr. Mantz said from the leaders and the Street.

Mr. Kirkpatrick referenced the size of pipes and Mr. Clerico's concerns that the pipes may be too small to carry existing flows. Mr. Mantz testified that by controlling the rate of flow the duration of the flows would be extended. Mr. Clerico indicated he would revisit the original system design. Mr. Mantz said he would also like to revisit the design. Mr. Clerico said the riparian buffers should be shown on the Plan.

Mr. Mantz said that applicant must meet Soil Conservation Standards (SCS). The Plan has not been provided to Soil Conservation. Atty. Maziarz asked Mr. Ford for time to confer with her client. Mr. Ford announced that the Board would take a brief recess.

The Hearing resumed. Atty. Maziarz said applicant would grant an Extension of Time to Act. She said her client would like to come back to the Board and explore Ordinance issues with the Planner. Atty. Anderson said it is not the Planner's role to make a decision. She understood and said the Board would have to make a determination as to their function. Mr. Anderson thought the question was about the construction and meaning of the Ordinance and that implicates the interpretative power of the Board of Adjustment. Atty. Maziarz said there was a question about the Interpretation of the Ordinance and there was a question about the Planning Board's interpretative powers. Atty. Anderson suggested that it was important for the Board and the applicant to know which Board would be involved, to see if it is an interpretation. Ms. Maziarz said it was up to the Board if they wanted to send the application to the Zoning Board. Mr. Ford asked when Atty. Maziarz would like to have a meeting. Atty. Anderson said the Board should discuss if it is satisfied that an exploration of the Planner is an appropriate course of action. Atty. Maziarz said she had no idea this would be happening. Atty. Anderson said the issue was discussed with applicant and applicants' professionals. He said there was no intention by the Board or their Professionals to blind side anybody.

Atty. Maziarz requested to carry the Hearing. Mr. Ford said that request would be granted. The next available date is February 7, 2019. Atty. Anderson recommended an extension of ninety days. Ms. Maziarz said applicant agreed to extend the Hearing until February 7, 2019. Mr. Kirkpatrick did not recommend that since Mr. Mantz testified substantial changes are required. Atty. Maziarz said that if applicant were sent to the Zoning Board none of the above would matter. The date of the extension was discussed at length. Mr. Ford said sixty days would be appropriate. Ms. Maziarz agreed to an Extension through March 28, 2019.

Motion: Mr. Kirkpatrick made a motion to grant an Extension of Time to act through March 28, 2019, with no further Notice required. Mr. Nace seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Mr. Ford announced the Board would take a ten-minute recess.

The meeting re-convened.

**Appointment of Traffic Engineer:** Mr. Ford said the Board would be considering appointment of a traffic engineer. He said the Township Committee had made an appointment and he thought i

appropriate for the Board to appoint the same individual. Mr. Clerico made the recommendation of Walter Lublanecki as the Township Engineer. Mr. Kirkpatrick asked that Mr. Lublanecki's resume be circulated prior to making an appointment on February 7, 2019.

Mr. Ford indicated the Board should discuss the February 7, 2018 meeting. Atty. Anderson said that since litigation could be involved an Executive Session would be in order. He said the motion to go into Executive Session requires that the topic to be discussed is potential litigation and that the time when the circumstances under which the minutes of the closed meeting will be made public and the answer he recommended since this an attorney/client issue was not to release them.

Motion: Mr. Kirkpatrick made a motion to go into Executive Session at 9:50 p.m. Mr. Nace seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

A Resolution providing for a meeting Not Open to the Public in Accordance with the Provisions of the N.J. Open Public Meetings Act, N.J.S.A. 10:4-12.

WHEREAS, the Planning Board of the Township of Union is subject to the Open Public meetings Act, N.J.S.A. 10:A4-6, et seq., and

WHEREAS, the Open Public Meetings Act, N.J.S.A. 10:4-12, provides that an Executive Session, not Open to the Public, may be held for certain specified purposes when authorized by Resolution, and

WHEREAS, it is necessary for the Planning Board of the Township of Union to discuss in a session not open to the public certain matters relating to the item or items authorized by N.J.S.A. 10:4-12b and designated below:

Matters Relating to Litigation: The legal aspect pertaining to Block 22, Lot 34 Perryville Road.

Now, therefore, be it resolved by the Planning Board of the Township of Union, assembled in Public Session on April 11, 2019, at 9:50 p.m., in the Union Township Municipal Building, 140 Perryville Road, Hampton, NJ, 08827, for the discussion of matters relating to the specific item designated above.

It is anticipated the deliberations conducted in closed session may be disclosed to the public upon determination by the Planning Board that the public interest will no longer be served by such confidentiality.

The Executive Session ended at 10:04 p.m.

Mr. Ford asked for a motion to refer the matter of Interpretation to the Board of Adjustment and to have the matter heard on February 7, 2019 and to invite applicant to attend and provide testimony on the matter.



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Motion: Mr. Kirkpatrick made the motion. Mr. Eschbach seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Mr. Kastrud asked how the applicant would be informed. Atty. Anderson said he would inform the applicant.

Motion to Adjourn: Mr. Kirkpatrick made a motion to adjourn at 10:06 p.m. Mr. Eschbach seconded the motion.

Vote: All Ayes, No Nays, Motion Carried

Grace A. Kocher, Secretary